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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Assessment and Collection of)

Regulatory Fees for Fiscal Year 1995)

MD Docket No. 95-3

COMMENTS OF THE ASSOCIATED PRESS

The Associated Press ("AP"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned docket.¹ AP opposes the Commission's proposal to increase the regulatory fees imposed on registered earth stations from \$6.00 per call sign to \$120.00 per meter per call sign.² As discussed below, the proposed new fee level lacks any sound rationale, draws unfair and unwarranted distinctions, and undermines important Commission policies. Congressional intent in authorizing the collection of regulatory fees requires that the fees for receive-only earth stations be dramatically reduced.

AP operates a network of receive-only earth stations used in connection with the distribution of news information and reports.³ Nearly 1,000 of AP's receive-only earth stations are registered under the Commission's Part 25 rules, and AP operates several hundred more earth stations on an unregistered basis, consistent with the

¹ FCC 95-14 (Jan. 12, 1995) ("Notice").

² Notice, ¶ 51.

³ AP also is the licensee of transmit-receive earth stations.

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Commission's Part 25 rules.⁴ AP began to implement the receive-only earth station network approximately 15 years ago as a tool for ensuring access to high quality communications paths for timely distribution of news and related information on a cost-effective basis.

For fiscal year 1994, the fee for earth stations under nine meters in size (whether receive-only, transmit-receive, or transmit-only) was \$0.06 per antenna per call sign, with licensees with less than 100 antennas per call sign subject to a minimum \$6.00 fee per call sign. In that situation, assuming that AP had approximately 1,000 registered earth stations (with one antenna per call sign) as of October 1, 1993, its fee would equal approximately \$6,000.00.

The Commission has proposed for fiscal year 1995 that "receive only earth stations will be assessed a per meter fee, regardless of whether they are above or below 9 meters in size."⁵ The fee per meter will be \$120.00.⁶ AP thus would be subject to an annual regulatory fee of \$360,000.00 (3 meters x \$120 x 1,000 earth stations) -- an increase of **sixty** times the fee paid by AP the preceding fiscal year! Viewed on a per earth station basis, AP paid a fiscal year 1994 regulatory fee of \$6.00 in connection with a receive-only earth station license registration that would warrant a fee of \$360.00 under the current proposal.

⁴ Most of the AP earth station antennas are approximately three meters in diameter. Some of the most recent installations are 2.8 meters in diameter.

⁵ *Notice*, ¶ 51.

⁶ *Id.*

AP opposes adoption of the Commission's proposal to base the regulatory fee for all registered receive-only earth stations on a \$120.00 per meter basis. AP recognizes that the Commission is required by Congress to recoup nearly twice as much money from regulatory fees in fiscal year 1995 as in fiscal year 1994 -- but that does not warrant the level of increase imposed on the registrants of receive-only earth stations. The proposal contained in the *Notice* raises serious questions about the equitable treatment of different classes of licensees as well as the Commission's implementation of the statutory directives contained in Section 9 of the Communications Act, as amended.⁷

First, the Commission's enforcement, policy and rulemaking, international activities, and user information services related to receive-only earth stations under nine meters has not increased 60 -- or even 30 -- times. Indeed, for a number of reasons, receive-only earth stations would appear to receive very little benefit from the types of activities that are to be covered by the regulatory fees.⁸ For example, because receive-only earth stations do not transmit radio energy, they cannot cause interference to other radio-based operations -- thus minimizing enforcement activities relevant to registered receive-only dishes.

⁷ See 47 U.S.C. § 159.

⁸ See 47 U.S.C. § 159(b)(1)(A).

Moreover, the Commission has virtually completely deregulated receive-only earth stations.⁹ Among other things, receive-only facilities like those operated by AP do not need to be "licensed;" operators of such facilities may "register" their earth stations in order to obtain frequency coordination protection.¹⁰ Fees for such registration are recovered through the application fee requirements. Because of the longstanding deregulated nature of receive-only earth stations, there would appear to be only limited policy and rulemaking activity relevant to such facilities. The same rationale would apply to international activities and user information services related to registered receive-only earth stations.

Given the regulatory posture of receive-only earth stations, AP finds the cost allocation of \$4,116,000.00 to receive-only earth stations¹¹ to be unbelievable and without any credibility. The Commission has provided no explanation for that allocation, and AP seriously doubts the validity of that amount as necessary to cover regulatory activities (as opposed to application processing) related to receive-only earth stations.

⁹ *E.g.*, Amendment of Part 25 of the Commission's Rules and Regulations To Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and To Revise Application Processing Procedures for Satellite Communications Services, 6 FCC Rcd 2806, 2806-07 (1991) ("*Part 25 Order*") ("Since 1979, the Commission has been moving toward deregulation of domestic receive-only earth stations.").

¹⁰ *Id.*; see 47 C.F.R. §§ 25.131, 25.133, 25.162 (1993).

¹¹ *Notice*, ¶ 51.

Second, the Commission adopted a per meter valuation for all earth stations "to eliminate the disparity in the fee requirement for receive only antennas above and below 9 meters."¹² Because of the operational nature of such facilities, there appears to be no justification for distinguishing between different receive-only earth stations based on their size. Rather, a greatly reduced flat fee applied to all receive-only stations, regardless of their size, would both be more equitable to the registrants of such facilities and more accurately reflect the enforcement, policy, international, and use information activities associated with such activities.

Third, the different fee levels assigned to transmit-receive and transmit-only dishes, on the one hand, and to receive-only facilities, on the other hand, do not appear to reflect accurately the very different regulatory implications associated with each such category of operations. Transmit operations by their nature present interference possibilities that simply do not exist with receive-only earth stations.¹³ These transmit earth stations thus implicate a much higher level of Commission enforcement activity.¹⁴ Transmit earth stations also remain subject to a more comprehensive regulatory regime, notwithstanding the Commission's efforts to streamline such

¹² Notice, ¶ 51.

¹³ Indeed, this fundamental distinction is one of the rationales underlying the Commission's deregulation of receive-only earth stations. *E.g.*, *Part 25 Order*, 6 FCC Rcd at 2808-09.

¹⁴ To the extent the Commission ensures frequency protection for registered receive-only earth stations, the possible sources of interference should bear the regulatory fee burden.

policies.¹⁵ The allocation of a smaller amount (\$3,533,500.00 versus \$4,116,000.00) to be recovered from transmit and transmit-receive earth stations cannot be squared with the technical and regulatory realities.

Fourth, AP operates its receive-only earth station network as a private communications system for the distribution of its news and information products to its members. As such, the network is analogous to a private microwave system licensed to a business or other entity to meet its internal communications needs. In stark contrast to receive-only earth station licensees, private microwave licensees are to be assessed a fee of only \$7.00 per license.¹⁶ The *Notice* offers no explanation for this gross discrepancy in the fees imposed on private communications systems.

There thus seems to be no basis whatsoever for increasing the fee for 3-meter receive-only earth stations by a factor of 60. The *Notice* fails to provide any explanation or justification for such a large jump in the regulatory fees applied to receive-only earth station facilities. Imposing a regulatory fee of that size in the context of a largely deregulated service does not comport with Congressional intent or reflect a proper allocation of regulatory activities to the services within the Commission's jurisdiction.

Moreover, despite repeated statements by the Commission and its decision-makers in favor of competitive telecommunications opportunities for users,

¹⁵ See generally *Part 25 Order*.

¹⁶ *Notice*, ¶ 18.

whether obtained from carriers or provided over internal, privately operated networks,¹⁷ the effect of this disproportionately high regulatory fee could be to drive licensees and registrants of small earth station facilities to discontinue use of their networks. Such users would thus be forced to seek service from existing carriers (which may or may not be able to meet the tailored needs of an entity like AP), thus undermining the competitive nature of the telecommunications marketplace.

Alternatively, receive-only earth station registrants could cancel their FCC registrations, thus foregoing frequency interference protection. Without some protection, AP and other entities will be forced to expend increased funds on equipment purchases and relocations as subsequent fixed microwave uses are coordinated and licensed to operate frequency paths that interfere with the existing receive-only earth station facilities. This result likewise runs counter to Commission-established policies.

For all the reasons set forth above, AP urges the Commission to revisit its proposal, and instead make only a proportionate increase in the fiscal year 1994 regulatory fee applied to registered receive-only earth stations under nine meters in size to account for the increased level of regulatory fees to be recovered by the Commission in fiscal year 1995. Such action will more effectively serve the regulatory fee

¹⁷ See, e.g., FCC News, "FCC Budget of \$223,600,000 Proposed for Fiscal Year 1996" (Feb. 7, 1995).

purposes, promote more rational and equitable funding of the Commission's regulatory activities, and further other important Commission policies and the public interest.

Respectfully submitted,

THE ASSOCIATED PRESS

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